

Supreme Court of the United States

OCTOBER TERM, 1970

No. 324

PRESTON A. TATE,

Petitioner,

—v.—

HERMAN SHORT, Chief of Police, Houston, Texas,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF
CRIMINAL APPEALS OF TEXAS

I N D E X

	Page
Memorandum of Finality	1
Order of Decision and Denial of Motion for Rehearing, as transmitted by Court of Criminal Appeals of Texas to County Criminal Court at Law, No. 1, Harris County, Texas	2
Motion for Rehearing before the Court of Criminal Appeals of Texas	3
Decision of the Court of Criminal Appeals of Texas in <i>Ex parte Tate</i>	5
Summation of Relator	7
State's Appellate Brief	15
Record Filed in Court of Criminal Appeals of Texas	18

	Page
Caption	20
Application for Writ of Habeas Corpus and Order of the Court Thereon	20
Writ of Habeas Corpus Together with Return of the Sheriff thereon	27
Return of Herman Short	30
Judgement of the County Criminal Court at Law, No. 1, Harris County, Texas	33
Habeas Corpus Bond	34
Docket Sheet, August 30, 1968	39
Affidavit of Inability to Pay Costs or Give Security therefor	41
Order of the County Criminal Court at Law, No. 1, Harris County, Texas	43
Designation of Materials for Inclusion	44
Docket Sheet: November 21, 1968	45
Docket Sheet: November 22, 1968	46
Docket Sheet: November 27, 1968	47
Agreed Stipulations	49
Certificate of Clerk	51
Writ of Procedendo	52
Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari	55

CLERK'S OFFICE
COURT OF CRIMINAL APPEALS OF TEXAS
AUSTIN, TEXAS

I, GLENN HAYNES, Clerk of the Court of Criminal Appeals of Texas, do hereby certify that in Cause No. 42,209 styled:

EX PARTE PRESTON A. TATE, APPELLANT

vs.

HERMAN SHORT, Chief of Police of the City of Houston
Texas, APPELLEE

judgment of the County Criminal Court at Law No. 1 of Harris County, Texas, was affirmed on July 16, 1969. Appellant's Motion for Rehearing was overruled, without written opinion, October 22, 1969, and on October 24, 1969 mandate issued.

THEREFORE, with the overruling of Appellant's Motion for Rehearing, this cause was disposed of by this Court on October 22, 1969, appellant having exhausted all remedies in this, The Court of Criminal Appeals of Texas, and said judgment has now become final on the docket of this Court.

WITNESS my hand and Seal of said Court, at office, in Austin, Texas, this the 9th day of March, A.D. 1970.

/s/ Glenn Haynes
GLENN HAYNES, Clerk of the Court
of Criminal Appeals of Texas

[SEAL]

TRIAL COURT NO. 245832

THE STATE OF TEXAS,

To the County Criminal Court at law No. 1 of Harris
County—Greeting:

Before our Court of Criminal Appeals, on the 22nd day
of October A.D. 1969, the cause upon appeal to revise or
reverse your Judgment between

EX PARTE PRESTON A. TATE, APPELLANT

No. 42,209

vs.

THE STATE OF TEXAS, APPELLEE

was determined; and therein our said Court of Criminal
Appeals made its order in these words:

Petitioner is an inmate of the prison farm of the City
of Houston by virtue of a writ of habeas corpus growing out of six traf-
fic court convictions with aggregate fines of \$425.00.

We overrule appellant's contention that because he is
too poor to pay the fines his imprisonment is unconsti-
tutional. His status as an indigent does not render this
petitioner immune from criminal prosecution.

The relief prayed for is denied.

Appellant's motion for rehearing overruled without
written opinion.

WHEREFORE, We command you to observe the order
of our said Court of Criminal Appeals in this behalf and
in all things to have it duly recognized, obeyed and
executed.

WITNESS, the HON. K. K. WOODLEY, Presiding
Judge of our said Court of Criminal Appeals,
with the Seal thereof annexed, at the City of
Austin, this 24th day of October A.D. 1969

GLENN HAYNES
Clerk.

/s/ [Illegible]
Deputy Clerk

[SEAL]

[Filed, Oct 27 1969 Ray Hardy, District Clerk
Harris County, Texas By [Illegible] Deputy]

STATE OF TEXAS
COUNTY OF HARRIS

I, Ray Hardy, District Clerk of Harris County, Texas, do hereby certify that the foregoing is a true and correct copy of the original record, now in my lawful custody and possession, filed on: Oct. 27, 1969, as appears of record in my office.

Witness my official hand and seal of office, this March 10, 1970.

RAY HARDY, District Clerk
Harris County, Texas

By /s/ S. Daniel, Deputy

Reh. 10-15-69

No. 42,209

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS
AUSTIN, TEXAS

EX PARTE: PRESTON A. TATE

MOTION FOR REHEARING

PETER S. NAVARRO, JR.
Attorney for Appellant
6731 Harrisburg Boulevard
Houston, Texas 77011
928-3943

[Filed in Court of Criminal Appeals Jul 31 1969
Glenn Haynes, Clerk]

No. 42,209

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS
AUSTIN, TEXAS

EX PARTE: PRESTON A. TATE

MOTION FOR REHEARING

To THE HONORABLE COURT:

Comes now PRESTON A. TATE, Appellant, and moves for a Rehearing in this cause, asserting as grounds therefore, the following:

1.) Since it is undisputed that the Appellant is indigent, the trial Court should have imposed specific conditions of probation requiring "reasonable" fines to be paid in installments rather than give him no alternative but to serve a sentence in jail or the prison farm.

2.) Though Appellant's status as an indigent does not render him immune from criminal prosecution, his inability to pay the aggregate fines of \$425.00, thus causing him to be jailed, presents Appellant's contention that such a sentence establishes a dual standard of punishment, i.e., a fine for non-indigents and imprisonment for indigents, in contravention of the Constitution of the United States, and the State of Texas.

WHEREFORE, Appellant prays that this Honorable Court grant this Motion For Rehearing and discharge the Appellant from custody.

Respectfully submitted,

/s/ Peter S. Navarro, Jr.
PETER S. NAVARRO, JR.
Attorney for Appellant
6731 Harrisburg Blvd.
Houston, Texas 77011
928-3943

CERTIFICATION

I certify that a true copy of the Motion For Rehearing was mailed by United States Certified Mail, postage prepaid, to Honorable Carol S. Vance, District Attorney, Criminal Courts Building, Houston, Texas, 77002, Attorney for the State, on the 29th day of July, 1969.

/s/ Peter S. Navarro, Jr.
PETER S. NAVARRO, JR.
Attorney for Appellant
6731 Harrisburg Blvd.
Houston, Texas 77011
928-3943

A True Copy

Attest: Glenn Haynes, Clerk
Court of Criminal Appeals of Texas
By: /s/ Troy Bennett
Deputy

[SEAL]

EX PARTE: PRESTON A. TATE

No. 42,209—Appeal from Harris County

OPINION

Petitioner is an inmate of the prison farm of the City of Houston by virtue of a writ of habeas corpus growing out of six traffic court convictions with aggregate fines of \$425.00.

We overrule appellant's contention that because he is too poor to pay the fines his imprisonment is unconstitutional. His status as an indigent does not render this petitioner immune from criminal prosecution.

The relief prayed for is denied.

MORRISON, Judge

(Delivered July 16, 1969)

No. 42,209

EX PARTE: PRESTON A. TATE, APPELLANT

v/s.

THE STATE OF TEXAS, APPELLEE

APPEAL FROM HARRIS COUNTY

RELIEF DENIED

**OPINION BY
MORRISON, Judge**

[Filed in Court of Criminal Appeals, Jul 16 1969
Glenn Haynes, Clerk]

A True Copy

Attest: Glenn Haynes, Clerk
Court of Criminal Appeals of Texas

By: /s/ Troy Bennett
Deputy
[SEAL]

No. 42,209

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS
AUSTIN, TEXAS

EX PARTE: PRESTON A. TATE

SUMMATION OF RELATOR

PETER S. NAVARRO, JR.
6731 Harrisburg
Houston, Texas 77011
Attorney for Relator

Of Counsel:

BROCK SHAMBERG
1402 Prospect, # 1
Houston, Texas 77004

[Filed in Court of Criminal Appeals, Jun 25 1969
Glenn Haynes, Clerk]

HABEAS CORPUS, TO THE COURT OF CRIMINAL APPEAL,
BY APPEAL FROM THE COUNTY CRIMINAL COURT AT
1 OF HARRIS COUNTY, TEXAS

SHORT STATEMENT OF THE CASE

On the 7th August, 1968, the Relator, and his wife had reason to call the Houston City Police Department about a domestic matter (s/f p. 20). When the officers arrived at Relator's residence they first had a conversation with him, after which, the Relator was taken down to the police station. (s/f pp. 13-14)

The Relator's testimony reflects that he was eventually detained, the same day, at the City jail as a result of

some outstanding unpaid "traffic-tickets". (s/f pp. 14-16).

Relator appeared in the Corporation Court of the City of Houston on six different occasions, entering pleas of "not guilty" five times, and the plea of "nolo contendere" the sixth and last time. It was on this latter plea that the Court entered judgments on a series of alleged delinquent traffic-violations fining your Relator the total sum of Four hundred twenty-five dollars (\$425.00). (s/f pp. 20-22.)

At no time during his appearance before the Corporation Judge, was Relator apprised of his right to the advice of counsel, though he was told if he couldn't produce ". . . the attorney or the money . . ." he, . . . "would be in jail . . ." (s/f p. 23).

After filing an affidavit that he was too poor to pay the fines assessed, the Relator was released on a Habeas Corpus bond on August 28, 1968. He served twenty-one days at the City of Houston Prison Farm. He has received credit for one hundred five dollars (\$105.00), or credit against the fine at five dollars (\$5.00) for each day or fraction of a day he has served, and could be released from custody, absent Habeas Corpus, if he were able to pay the uncredited sum of three hundred twenty dollars (\$320.00), which he cannot do because he hasn't the money. (s/f pp. 25-28).

The Court below denied the Writ of Habeas Corpus rather than dismiss it, permitting this Appeal to be heard, and to be determined before this Honorable Court, upon the law and the facts arising upon record. The Relator would exhaust his remedies here.

POSTURE OF RELATOR

Fully aware that the design of this appeal is to do substantial justice, your Relator is most prone to develop, as they concern him, the two stark factual realities arising from the record.

On the one hand, and at all times material, the Relator is and was an indigent, or to use the language of the State's attorney in stipulation, ". . . he is poverty

striken, and (that) his wholly family has been for all periods of time therein, and probably always will be . . ." (s/f p. 28). Short of some miracle, there is no conceivable way or manner in which the Relator can pay the sum of \$320.00 (the balance of the fine) at one time, and if this appeal fails, he will, upon remand to custody, again be committed to the City prison farm in lieu of payment of the remaining fine, at \$5.00 a day for 64 more days.

On the other hand, it should be emphasized that Relator appeared six times before the Corporation Judge, pleading "not guilty" five times, and lacking further resolution, ceased to the plea of "nolo-contendere" for the sixth and the last time. It was upon this plea that Relator was found "guilty" on all offenses charged, and fines were imposed on nine traffic violations; the Court "struck off" fifty dollars traffic fines on all, save one. (e/f agreed stipulations). On none of these appearances, were the fiscal abilities of the Relator alluded to as a matter of fact, there were no probes made, relative to his capacity to pay a fine-meanwhile his family was on relief. (s/f p. 28).

ARGUMENT AND AUTHORITIES

POINT I

IMPRISONMENT OF RELATOR, AN INDIGENT, TO THE CITY PRISON FARM IN CUSTODY OF THE CHIEF OF POLICE OF THE CITY OF HOUSTON, TEXAS, UNTIL RELATOR SHALL HAVE PAID TRAFFIC FINES TOTALLING \$425.00, WHERE RELATOR WAS UNABLE TO PAY SUCH FINES, VIOLATED THE EIGHTH AMENDMENT PROHIBITION AGAINST EXCESSIVE, CRUEL AND PUNISHMENT.

It is undisputed that Relator has no funds, or property, and is unable to pay the traffic fines imposed upon him by the Corporation Court of Houston, Texas. He must therefore discharge the fines in full service in jail at the rate

of five dollars (\$5.00) per day.¹ The By-laws and Ordinances of the City of Houston are enforced by a fine not to exceed two hundred dollars (\$200.00).² The sentencing court by imposing fifty dollar (\$50.00) fines each for eight traffic infractions, and one twenty-five dollar (\$25.00) fine for one traffic case would prompt the Relator to suggest that though his indigency must have been obviously discernable, it apparently mattered little in the eventual assessment of the fines. Four hundred and twenty-five dollars (\$425.00) is an enormous amount of money for the Relator, and represents more than the equivalent of four disability checks which Relator receives from the Veteran's Administration monthly. It would seem that the sentencing Court could have been more tolerant in measuring and prescribing justice, especially after the six appearances by Relator before it.

The Relator is not unaware that it is generally settled that a direction in a sentence imposing a fine that Defendant stand committed until the fine is paid is no part of the penalty for the offense, but is merely a means of compelling obedience to the judgment of the Court.

However in *Chapman v. Selover*, 225 N.Y. 417, 421, Judge Cardozo elaborated on this by explaining that the "State when it punishes misdemeanors by fine, is not confined to the dubious remedy of a civil action for a penalty." Imprisonment is, he explained, another remedy which the State may employ against "The offender who REFUSES to pay."

Lest it be overlooked, the Relator, unlike the more affluent Defendant, does not carry the "keys to the jail in his pocket," and his predicament, is made hopeless by the imposition of a fine he is unable to pay. Moreover the failure, at any time previous to his being committed, to inquire into his economic capabilities further underscores the premise that the punishment is so dispropor-

¹ Houston Code, Sec. 15-60, Corporation Courts, (committment to jail until the full amount of the fine is paid); and see also, Houston Code, Sec. 35-8 Prisoners, (Credit against fine for service in jail or municipal prison farm—generally).

² Houston Code, Art. 11, Sec. 12, Charter, (Fines for violation of Ordinances.)

tionate to the offense, that it violates the excessive, cruel and unusual punishment clause of the Federal as, well as the State, constitutions. *Nemeth v. Thomas* 35 USLW 2320 (N.Y. Sup. Ct. Dec. 5, 1966); *Robinson v. California*, 370 US 660 (1962).

"Robinson" points out that drug addiction is an involuntary "status" and a state law which made the "status" of narcotic addiction, a criminal offense requiring imprisonment in the County Jail of at least 90 days, inflicted cruel and unusual punishment.³

Relator relies heavily on "Robinson" and would apply the rationale there to his involuntary "status" of indigency. Consequently any state law or ordinance which makes a prisoner out of a poor man because he cannot pay a fine, but forces him to work the fine off or lay out in jail, inflicts excessive, cruel and unusual punishment.

POINT II

IMPRISONMENT OF RELATOR, AN INDIGENT, TO THE CITY PRISON FARM IN CUSTODY OF THE CHIEF OF POLICE OF THE CITY OF HOUSTON, TEXAS, UNTIL RELATOR SHALL HAVE PAID TRAFFIC FINES TOTALLING \$425.00, WHERE RELATOR IS UNABLE TO PAY SUCH FINES VIOLATES HIS EQUAL PROTECTION GUARANTEES UNDER THE FEDERAL AND STATE CONSTITUTIONS

The sentences complained of lay an unconstitutionally unequal penalty upon the Relator. In a manner of speaking, they gave him the alternative of paying his entire debt to the State in dollars rather than in days. In effect, however, it left him no choice but serve a term of imprisonment that any person more affluent could have, and probably would have avoided serving.

³ *Robinson v. California*, 82 SCT 1417, p. 1421. To be sure imprisonment for ninety days is not, in the abstract a punishment which is either cruel or unusual. But the question cannot be considered in the abstract. Even one day in prison would be cruel and unusual punishment for the "crime" of having the common cold.

The sentencing judge knew of Relator's predicament, and it goes without saying that the discriminatory character of the sentences is manifest.

No court without some reasonable installment method of payment should be permitted to be so arbitrary as to order the jailing of a Defendant simply because he is impecunious, and as we have noted before, imprisonment for non-payment of a fine, "can validly be used only as a method of collecting for a refusal to pay a fine, "and that it is illegal to imprison a Defendant who is financially unable to pay". This is particularly true in cases where inquiry into the Defendant's capacity to pay is avoided. *Martin v. Erwin* (# 13084) Supplemental Order, U.S. District Court, Western District, La., Feb. 27, 1968). *United States v. Doe et al*, 101 F. Supp. 609, (1951); *People v. Saffore* 218 NE² 689; *People v. Collins* 261 NYS 2d 970; *People v. McMillan* 279 N.Y.S. 2d 941, *Spinler v. Montana*, Mont. S. Ct. No. 11536 (Nov. 1968); *In Re Figueroa* California Sup. Ct. Mendocino Co., No. 4502-c (Nov. 1968); *Beckham v. Purdy*, JE (S.D. Fla.) No. 69-64-Civ. (Mar. 1969).⁴

Beginning 13 years ago in *Griffin v. Illinois*, 351 U.S. 12 (1956), the Supreme Court has been making it ever more emphatic that the Fourteenth Amendment include an indigent person accused of crime when it declares:

". . . nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

⁴ Chief Judge Hincks, in *United States v. Doe et al* commented that the sentencing judge will need all available information as to a Defendant's capacity to pay a fine, as it is not sound sentencing policy to impose fines beyond the capacity of the Defendant to pay (101 F. Supp. 609, p. 613, note 6)

In Beckham v. Purdy, the Court set out the following precept as having been established in Federal Law:

". . . a Court is not powerless to compel a contumacious Defendant to pay a fine imposed as punishment in lieu of imprisonment, but imprisonment as a method of compelling payment of a fine may not be used in the case of an indigent who, although willing to do so, is without funds to pay the fine in order to avoid the alternative term of imprisonment. (U.S. District Court, Southern District, Florida, No. 69-64-Civ-JE, at pg. 4 of opinion.

Subsequent decisions, relying on the "Griffin" rationale hold that the imprisonment in lieu of fine discriminated between indigent and solvent Defendants in violation of the equal protection clause. For example in *People v. Collins* (supra, note /4) the court said:

It is only if we equate the payment of the fine with the additional period of detention in prison that both men can be said to stand equal before the law. An equation of one day of a man's liberty in jail for every dollar of the fine, in this enlightened era, should be examined very carefully before this form of equality of treatment is endorsed.

Relator submits that the decisions listed in the section of his argument are the only sound response to the Constitutional imperative that equal justice in criminal cases not be made to stand aside because the Defendant is without money.

CONCLUSION

We disagree with the State's contention, in her appellate brief, that the transcript does not reveal error of constitutional proportion.

The policy behind the practice for nonpayment of fines is to provide a means of collecting the fines. This policy consideration, though effective when the Defendant is merely unwilling to pay the fine, is inapplicable when the Defendant is unable to pay the fine.

Imprisonment of indigents for nonpayment invariably results in a drain on the state's revenues. The State does not receive the initial fine and must spend money to maintain the indigent-Defendant in jail. If the indigent Defendant is the head of the household, his imprisonment will result in the likelihood, (as in Relator's case) that his family will have to turn to state welfare agencies for aid.

It may be said that the state is justified in punishing an indigent prison to prevent his eluding, without pain, the penalty a nonindigent suffers in paying a fine. It may be further argued that the penalties, while different in form, are equal in burden. In theory, perhaps, a days

imprisonment may have its price in dollars, and the two may be equated. But that is plainly not true here, where the equalization rate was fixed at one day in jail for each five dollars of the fine, even though the legislature has recently devised a minimum wage law of a dollar and a quarter an hour. No one can seriously contend that such a penalty falls with equal severity on a man who can pay it, and a man who cannot.

WHEREFORE, PREMISES CONSIDERED, Relator prays that he be Discharged.

Respectfully Submitted,

/s/ Peter S. Navarro, Jr.
PETER S. NAVARRO, JR.
Attorney for Relator
6731 Harrisburg Blvd.
Houston, Texas 77011
928-3943

CERTIFICATION

I certify that a true copy of the Relator's Brief was mailed by United States Certified Mail, postage prepaid, to Honorable Carol S. Vance, District Attorney, Criminal Courts Building, Houston, Texas, 77002, Attorney for the State, on the 24th day of June, 1969.

/s/ Peter S. Navarro, Jr.
PETER S. NAVARRO, JR.
Attorney for Relator
6731 Harrisburg Blvd.
Houston, Texas 77011
928-3943

A true Copy

Attest: Glenn Haynes, Clerk
Court of Criminal Appeals of Texas
By: /s/ Troy Bennett
Deputy

[SEAL]

No. 42,209

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS
AT AUSTIN, TEXAS

EX PARTE PRESTON A. TATE

Appeal from the County Criminal Court at Law No. 1
of Harris County, Texas

STATE'S APPELLATE BRIEF

JIM VOLLMERS
State's Attorney
Austin, Texas

CAROL S. VANCE
District Attorney
Harris County, Texas

PHYLLIS BELL
Assistant District Attorney
Harris County, Texas
Counsel for Appellee

[Filed in Court of Criminal Appeals, Jun 19 1969
Glenn Haynes, Clerk]

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Appellant was granted a writ of habeas corpus in the
County Criminal Court at Law No. 1 of Harris County,
Texas, hearing on which was held on August 30, 1968.

The officer's return on said writ recited that Appellant was being held by virtue of committments issued by Corporation Court No. 3 of the City of Houston, Texas, ordering that Relator be committed to the City Prison Farm in custody of the Chief of Police of the City of Houston.

After the hearing on the writ, the court denied the application and remanded Appellant to the Chief of Police of the City of Houston, Texas. Appeal is taken from this order.

There is a transcription of the court reporter's notes of the hearing. Evidence therein is ample to support the action of the court. There are no formal bills of exception. There is a stipulation in the transcript that Appellant was committed to the City Prison Farm until he paid fines totaling \$425.00. Appellant makes no showing that he has served enough time to entitle him to release under the provisions of Art. 45.53 VAACP. On the contrary, the Appellant affirmatively asserts in his application for the writ of habeas corpus that he is required to serve seventy-two more days in the prison to satisfy the said Art. 45.53.

Appellant has assigned no error by brief on appeal filed with the trial court, and the transcript does not reveal error of constitutional proportion. All proceedings appear to be regular, and nothing is presented for review.

Wherefore, premises considered, it is respectfully prayed that this remand be affirmed.

Respectfully submitted,

JIM VOLLMER
State's Attorney
Austin, Texas

CAROL S. VANCE
District Attorney
Harris County, Texas

/s/ Phyllis Bell
PHYLLIS BELL
Assistant District Attorney
Harris County, Texas

Certificate of Service

I certify that a true copy of the foregoing State's Appellate Brief was mailed by United States Certified Mail, postage prepaid, to Mr. Peter S. Navvaro, 6731 Harrisburg, Houston, Texas, 77011, Attorney for Appellant, on the 20th day of June, A. D. 1969.

/s/ Phyllis Bell
PHYLLIS BELL
Assistant District Attorney
Criminal Courts Building
Houston, Texas 77002
/telephone: 228-8311

A True Copy

Attest: Glenn Haynes, Clerk
Court of Criminal Appeals of Texas
By: /s/ Troy Bennett
Deputy

18

FROM:

**THE COUNTY CRIMINAL COURT AT LAW NO. 1
OF HARRIS COUNTY, TEXAS**

42209

PRESTON A. TATE, APPELLANT

vs.

**HERMAN SHORT, Chief of Police of the
City of Houston, Texas, APPELLEE**

Counsel for Appellant:

**MR. PETER S. NAVARRO
6781 Harrisburg Street
Houston, Texas, 77011**

[Filed in Court of Criminal Appeals, May 15, 1969,
Glenn Haynes, Clerk.]

INDEX

	Page
Caption	1
Application for Writ of Habeas Corpus and Order of the Court Thereon	2
Writ of Habeas Corpus Together with Return of the Sheriff Thereon	8
Return of Herman Short, Chief of Police	10
Judgment of the Court and Notice of Appeal	12
Habeas Corpus Bond	14
Docket Sheet for August 30, 1968	18
Affidavit of Inability to pay Costs or give Security therefor	19
Order of the Court	20
Designation of Materials for Inclusion	21
Docket Sheet for November 21, 1968	22
Docket Sheet for November 22, 1968	23
Docket Sheet for November 27, 1968	24
Agreed Stipulations	25
Certificate of the Clerk	26

IN THE COUNTY CRIMINAL COURT AT LAW NO. 1
OF HARRIS COUNTY, TEXAS

THE STATE OF TEXAS
COUNTY OF HARRIS

At a regular Term of the County Criminal Court at Law No. 1, of Harris County, Texas, begun and holden within and for the County of Harris, and State of Texas, at Houston on the 5th day of August, A. D., 1968, and which adjourned on the 5th day of October A. D. 1968, the Honorable Lee Duggan, Jr., Judge thereof presiding, the following cause came on for trial, to-wit:

No. 245832

EX PARTE: PRESTON A. TATE

vs.

HERMAN SHORT, Chief of Police of the
City of Houston, Texas

HABEAS CORPUS FOR RELEASE

245832

STATE OF TEXAS)
)
) SS
COUNTY OF HARRIS)

TO THE HONORABLE JUDGE OF THE COUNTY
CRIMINAL COURT NO. 1 OF HARRIS COUNTY,
TEXAS:

The undersigned attorney for and on behalf of Petitioner, Preston A. Tate, represents unto the Court that said Preston A. Tate is illegally restrained of his liberty in Harris County, Texas, by Herman Short, Chief of Police of the City of Houston, Texas; and the said confinement and restraint is not by virtue of any writ, order or process save by an informal Order of Commitment in

lieu of payment of a accumulated fine of Four Hundred Twenty-Five and No/100 (\$425.00) Dollars. Because of the informal nature of the said commitment or commitments, a copy or copies cannot be obtained to annex hereto, though your Affiant attaches hereto, the affidavits of Preston A. Tate, and his wife, Adah R. Tate, wherein references to various cause numbers are asserted, the same being germane to the said Preston A. Tate's illegal restraint by the said Herman Short.

Wherefore, Premises Considered, Petitioner, Preston A. Tate prays the Court to grant and issue the writ of Habeas Corpus to have the said Preston A. Tate forthwith brought before this Honorable Court to the end that he may be discharged from such illegal confinement and restraint.

/s/ Peter S. Navarro, Jr.
PETER S. NAVARRO, JR.
Attorney for Preston A. Tate
6731 Harrisburg Street
Houston, Texas 77011
WA 8-3943

I do, under oath, declare that the allegations of the foregoing petition are true according to my belief.

/s/ Peter S. Navarro, Jr.
PETER S. NAVARRO, JR.

SWORN and SUBSCRIBED to on this the 26th day of August, A.D. 1968.

/s/ [Illegible]
Notary Public in and for
Harris County, Texas

[NOTARY SEAL]

My commission expires June 1, 1969

CITY OF HOUSTON PRISON FARM

STATE OF TEXAS)
)
) SS
 COUNTY OF HARRIS)

Before me, the undersigned authority, personally appeared Preston A. Tate, who by me being duly sworn, deposes and says the following:

I am imprisoned, as a result of being unable to pay a fine in the above numbered and entitled causes.

Because I am too poor, I am, therefore, unable to pay the accumulated fine of \$425.00, thus:

Cause Number	Fine	Caption
6611 - 2867	\$50.00	No Texas operator's license
6610 - 6468	50.00	No Texas Operator's license
6610 - 6467	50.00	Illegal Registration
6610 - 5986	50.00	Run Stop Sign
6610 - 5985	50.00	No Texas Operator's License
6610 - 5988	50.00	Expired License Plates
6611 - 2866	50.00	Expired License Plates
6605 - 1910	50.00	May 27, 1966 - Capias pro-fine
6605 - 1911	25.00	Run Red Light
		May 27, 1966 - Capias pro-fine
		No Texas operator's license

And I cannot elect to satisfy the fine by payment of same as a result of my poverty.

Because of my imprisonment, my ability to gain a livelihood is fundamentally and seriously impaired.

I urge consideration of this affidavit, not only for myself, but for my wife, Adah Tate and my two sons, Robert Preston, age 2, and David Keith, age 8 weeks, all of whom are dependent upon me for their support and welfare.

/s/ Preston A. Tate
 PRESTON A. TATE

SWORN TO AND SUBSCRIBED before me this 20th day of August, 1968, by said affiant while under oath.

/s/ [Illegible]
 Notary Public in and for
 Harris County, Texas

[NOTARY SEAL]

IN RE: PRESTON A. TATE

STATE OF TEXAS

COUNTY OF HARRIS

This is to state under oath that the undersigned, Adah R. Tate, is the lawful wife of Preston A. Tate, and that the said Preston A. Tate is without resources to pay for various fines said to be due to the City of Houston, Texas; that said party was arrested on or about August 7, 1968; that the total fines set by the Court amounted to \$425.00, whereas there is as of this day a credit of \$65.00 or a total of 13 days at \$5.00 and that Mr. Tate would not be discharged from his present confinement until he may have served 72 more days at the City of Houston Prison Farm, from date hereof.

Whereas such confinement would create a very severe hardship on myself and our two (2) children, one male child, ROBERT PRESTON TATE, age 1 year 11 months and DAVID EITH TATE, age 8 weeks old by virtue of the fact that I am not employable as being needed at home and since our sole income is \$104.00 per month from Mr. Tate's Veteran Administration Disability Pension.

Wherefore, it is stated that the continued confinement of PRESTON A. TATE creates a very severe hardship upon us due to the foregoing.

/s/ Adah R. Tate
ADAH R. TATE

SWORN TO AND SUBSCRIBED before me this 19th day of August, 1968, by said affiant while under oath.

/s/ [Illegible]
Notary Public in and for
Harris County, Texas

[NOTARY SEAL]

THE STATE OF TEXAS.

To Herman Short
Chief of Police—City of Houston, Texas

Greeting:

YOU ARE HEREBY COMMANDED to produce and have before Hon. Lee Duggan, Jr. Judge of the County Criminal Court at Law No. 1 of Harris County, Texas, at Houston, Texas, in the said County and State, on the 30th day of August, 1968, at 2 o'clock P.M., the person and body of Preston A. Tate whom it is alleged you illegally restrain of his liberty, when and where you will show why you hold the said Preston A. Tate in custody and restrain him of his liberty.

HEREIN FAIL NOT, but of this Writ make due return
as the law directs.

Witness my official signature at Houston, Texas.
this the 27th day of August 1968.

/s/ Lee Duggan, Jr.
Judge Presiding

Bail fixed at \$500.00 pending hearing.

RETURN OF PERSON EXECUTING WRIT

(Arts. 177, 178, C. C. P.)

Came to hand the ___ day of ____ 19____, at _____ o'clock
____ M., and executed the ___ day of ____ 19____, by deliv-
ering to the within named _____
in person, a true copy of this Writ.

Sworn to and subscribed before me, this ___ day of
19___.

**RETURN OF PERSON RESTRAINING PRISONER
(Arts. 179, 180, C. C. P.)**

THE STATE OF TEXAS)

1

COUNTY OF HARRIS)

I, _____ of said County of Harris, in obedience to the within Writ of Habeas Corpus, have herewith the body of the within named _____ before the said _____; and for return of said Writ do state that said _____ is in my custody as _____ of said County, by virtue of a certain _____ issued by _____ on the ___ day of _____, 19_____, by which I was commanded to take the body of the said _____ and him safely keep, and have him before _____ to answer a charge of _____ preferred against him by _____ a copy of which said _____ is annexed hereto:

Sworn to and subscribed before me, this ____ day of
_____, 19____.

CO. CRIM. CT. AT LAW #1

No. 245832

WRIT OF HABEAS CORPUS

Returnable August 30, 1968 @ 2:00 P.M.

THE STATE OF TEXAS

vs.

EX PARTE: PRESTON A. TATE

Issued: August 28, 1968

RAY HARDY
District Clerk
Harris County, Texas

By: /s/ T. Allen
Deputy

[Filed: August 28, 1968. Ray Hardy, District Clerk,
Harris County, Texas. By: T. Allen, Deputy.]

WRIT OF HABEAS CORPUS, TOGETHER WITH THE RETURN
OF THE SHERIFF THEREON. FILED: AUGUST 28, 1968.

THE STATE OF TEXAS,

To Herman Short
Chief of Police—City of Houston, Texas

Greeting:

YOU ARE HEREBY COMMANDED to produce and have before Hon. Lee Duggan, Jr. Judge of the County Criminal Court at Law No. 1 of Harris County, Texas, at Houston, Texas, in the said County and State, on the 30th day of August, 1968, at 2 o'clock P.M., the person and body of Preston A. Tate whom it is alleged you illegally restrain of his liberty, when and where you will show why you hold the said Preston A. Tate in custody and restrain him of his liberty.

HEREIN FAIL NOT, but of this Writ make due return as the law directs.

Witness my official signature at Houston, Texas.
this the 27th day of August 1968.

/s/ Lee Duggan, Jr.
Judge Presiding

Bail fixed at \$500.00 pending hearing.

RETURN OF PERSON EXECUTING WRIT
(Arts. 177, 178, C. C. P.)

Came to hand the 28 day of August 1968, at 11:12 o'clock A.M., and executed the 25 day of August 1968, by delivering to the within named George L. Seber @ 12:05 P.M. in person, a true copy of this Writ.

/s/ [Illegible]
/s/ [Illegible]

Sworn to and subscribed before me, this 28 day of August 1968.

/s/ [Illegible]

[NOTARY SEAL]

RETURN OF PERSON RESTRAINING PRISONER

(Arts. 179, 180, C.C.P.)

THE STATE OF TEXAS)
)
COUNTY OF HARRIS)

I, _____ of said County of Harris, in obedience to the within Writ of Habeas Corpus, have herewith the body of the within named _____ before the said _____; and for return of said Writ do state that said _____ is in my custody as _____ of said County, by virtue of a certain _____ issued by _____ on the ___ day of _____, 19_____, by which I was commanded to take the body of the said _____ and him safely keep, and have him before _____ to answer a charge of _____ preferred against him by _____. a copy of which said _____ is annexed hereto:

Sworn to and subscribed before me, this ____ day of
_____, 19____.

CO. CRIM. CT. AT LAW #1

No. 245832

WRIT OF HABEAS CORPUS

Returnable August 30, 1968 @ 2:00 P.M.

THE STATE OF TEXAS

vs.

EX PARTE: PRESTON A. TATE

Issued: August 28, 1968

RAY HARDY
District Clerk
Harris County, Texas

By: /s/ T. Allen
Deputy

RETURN OF HERMAN SHORT, CHIEF OF POLICE
FILED: SEPTEMBER 5, 1968.

THE STATE OF TEXAS,

To Herman Short
Chief of Police—City of Houston, Texas

Greeting:

YOU ARE HEREBY COMMANDED to produce and have before Hon. Lee Duggan, Jr. Judge of the County Criminal Court at Law No. 1 of Harris County, Texas, at Houston, Texas, in the said County and State, on the 30th day of August, 1968, at 2 o'clock P.M., the person and body of Preston A. Tate whom it is alleged you illegally restrain of his liberty, when and where you will show why you hold the said Preston A. Tate in custody and restrain him of his liberty.

HEREIN FAIL NOT, but of this Writ make due return as the law directs.

Witness my official signature at Houston, Texas.
this the 27th day of August 1968.

/s/ Lee Duggan, Jr.
Judge Presiding

Bail fixed at \$500.00 pending hearing.

[Filed Sep. 5, 8:30 a.m., '68, Ray Hardy,
Dist. Clerk, Harris County, Texas.]

RETURN OF PERSON EXECUTING WRIT
(Arts. 177, 178, C. C. P.)

Came to hand the ___ day of _____ 19___, at _____ o'clock
M., and executed the ___ day of _____ 19___, by deliv-
ering to the within named _____
in person, a true copy of this Writ.

Sworn to and subscribed before me, this ___ day of
19___.

RETURN OF PERSON RESTRAINING PRISONER
(Arts. 179, 180, C. C. P.)

THE STATE OF TEXAS)
)
COUNTY OF HARRIS)

I, W. T. Higgins of said County of Harris, in obedience to the within Writ of Habeas Corpus, have herewith the body of the within named Preston A. Tate, released on bond as per order of this instrument and release No 43829; and for return of said Writ do state that said Preston A. Tate was in my custody as prisoner of said County, by virtue of a certain Commitments and Capias Pro Fines issued by Corp. Court No. 3, City of Houston, Texas on the 7 day of August, 1968, by which I was commanded to take the body of the said Preston A. Tate

and him safely keep, and have him before Judge Lee Duggan, Jr. or to release him on bond as ordered. to answer a charge of _____ preferred against him by _____
a copy of which said _____ is annexed hereto:

H. B. SHORT
Chief of Police

/s/ W. T. Higgins
Capt., Jail Division

Sworn to and subscribed before me, this 30 day of August, 1968.

/s/ T. J. Lero
T. J. LERO
Notary Public in and for
Harris County, Texas

[NOTARY SEAL]

CO. CRIM. CT. AT LAW #1

No. 245832

WRIT OF HABEAS CORPUS

Returnable August 30, 1968 @ 2:00 P.M.

THE STATE OF TEXAS

vs.

EX PARTE: PRESTON A. TATE

Issued: August 28, 1968

RAY HARDY
District Clerk
Harris County, Texas

By: /s/ T. Allen
Deputy

JUDGMENT OF THE COURT AND NOTICE OF APPEAL
RECORDED: VOLUME 14, PAGE 238

HABEAS CORPUS

MINUTES OF THE COUNTY CRIMINAL COURT
AT LAW NO. 1 OF HARRIS COUNTY, TEXAS.
AT AUGUST TERM, A. D. 1968

No. 245832

PRESTON A. TATE

vs.

THE STATE OF TEXAS

August 30th, A. D. 1968

HABEAS CORPUS

THIS DAY came on to be heard before me this application for the Writ of HABEAS CORPUS against Herman Short, Chief of Police, City of Houston, Texas, and the said respondent Herman Short, Chief of Police, City of Houston, Texas, having made due return of the said Writ of HABEAS CORPUS herein served upon him and having produced before me the person of the said Preston A. Tate I proceeded to hear the said application, and after having examined the Writ and the return of the respondent Herman Short, Chief of Police, City of Houston, Texas, and all papers and documents attached thereto, and having heard the testimony offered on both sides, I am of the opinion that legal cause has been shown for the imprisonment or restraint of the said Preston A. Tate. I am of the opinion that the said Preston A. Tate is legally held in custody and under restraint of his liberty by the said respondent Herman Short, Chief of Police, City of Houston, Texas. It is therefore ordered and adjudged that the application of the said Preston A. Tate herein be denied, and that the said Preston A. Tate be and he is now hereby remanded to the custody of the

said respondent Herman Short, Chief of Police, City of Houston, Texas.

To which action of the Court the Relator in open court excepts and gives notice of Appeal to the Court of Criminal Appeals of the State of Texas at Austin, Texas.

\$500.00 Bond remains in effect pending ruling by the Court of Criminal Appeals in Austin, Texas.

[Recorded: Volume 14, Page 238 General Minutes County Criminal Court at Law No. 1 of Harris County, Texas.]

HABEAS CORPUS BOND

FILED: AUGUST 29, 1968

No. 245,832

EX PARTE: PRESTON A. TATE

HABEAS CORPUS BOND

THE STATE OF TEXAS)
) ss
COUNTY OF HARRIS)

KNOW ALL MEN BY THESE PRESENTS THAT we PRESTON A. TATE, (Applicant) as principal, and other signers hereto, as sureties, are held and firmly bound unto the State of Texas, in the full and just sum of FIVE HUNDRED AND 00/100 (\$500.00) DOLLARS, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally; And in addition thereto, we are bound for the payment of all fees and expenses that may be incurred by peace officers in rearresting principal in the event the condition of this bond are violated. For the payment of which sum or sums well and truly to be made, we do bind ourselves and each of us, our heirs, executors and administrators, jointly and severally by these presents:

WHEREAS, the above bounden Principal (Applicant) was on or about the 17th day of August, A.D., 1968, found guilty of the following offenses:

Cause Number	Fine	Caption
6611 - 2867	\$50.00	No Texas operator's license
6610 - 6468	50.00	No Texas operator's license
6610 - 6467	50.00	Illegal Registration
6610 - 5986	50.00	Run Stop Sign
6610 - 5985	50.00	No Texas Operator's License
6610 - 5988	50.00	Expired License Plates
6611 - 2866	50.00	Expired License Plates
6605 - 1910	50.00	May 27, 1966 - Capias pro-fine
6605 - 1911	25.00	Run Red Light
		May 27, 1966 - Capias pro-fine
		No Texas Operator's License

WHEREAS the said Applicant (Principal) did apply to the County Criminal Court No. One of Harris County, Texas, for a Writ of Habeas Corpus, and,

WHEREAS the Judge of said County Criminal Court at Law No. One, did on the 27th day of August, A.D., 1968, grant and issue a Writ of Habeas Corpus directed to Herman Short, Chief of Police, Houston, Texas, commanding him to produce before said Court, the above bounden Principal (Applicant) on the 30th day of August, A.D. 1968, at Two (2:00) O'Clock P.M. in the Court Room of said Court, in the City of Houston, Harris County, Texas, and at said time and place to show why Applicant is held in custody or restrained by him, the said Chief of Police.

WHEREAS, said Court did fix the amount of bail pending the examination or hearing upon said Writ at Five Hundred (\$500.00) Dollars,

NOW, THE CONDITION OF THE ABOVE BOND is such that if the above bounden Principal (Applicant) shall make his personal appearance as required by law before the said Court in the Court Room of said Court in the City of Houston, Harris County, Texas, on the 30th day of August A.D., 1968, at Two O'Clock P.M. and there to remain from day to day and not depart until discharged by due course of law, then the above bond to be null and void, otherwise to be and remain in full force and effect.

WITNESS our hands the 28th day of August, A.D.,
1968.

/s/ Preston A. Tate
Principal
/s/ Howard G. Cook
Surety
/s/ Kathryn B. Cook
Surety

Taken and approved by me
this 28th day of August, 1968.

/s/ Lee Duggan, Jr.
Judge presiding
County Court at Law No. 1
Harris County, Texas

Taken & Approved by me
this 28th day of August, 1968

C. V. (BUSTER) KERN
by: /s/ [Illegible]
Deputy

[Filed (Date and Time Illegible), Ray Hardy,
Dist. Clerk, Harris County, Texas.]

*H*OLDENANCE BOND—County Criminal Court of Law No. _____

{
THE STATE OF TEXAS
COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS:

That we, George E. COOK,
undersigned, NATHAN E. COOK
~~as~~ sureties, are held and firmly bound unto the STATE OF TEXAS, in the penal sum of

DOLLARS,
~~or the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and
assigns, jointly, severally and firmly, by these presents.~~

The condition of the above obligation is such, that, whereas, the above bound principal _____

has been arrested by C. V. BUSTER KERN, Sheriff of Harris County,
Texas, on a charge of a misdemeanor, by virtue of a capias, issued to said Sheriff by R. J. Lindley, ex-officio Clerk
of County Criminal Court at Law No. _____ of Harris County, Texas.

Now if the said principal shall be and personally appear instanter at the present term of the County Criminal
Court at Law No. _____ of Harris County, Texas, now in session in and for the County of Harris, at the
Court House thereof, in the City of Houston, Texas, there to remain in attendance from day to day and from term to
term until discharged by due order of the Court, to answer the State aforesaid on said charge of a misdemeanor and
not to depart the Court, without leave, then, and in that case, this bond to be null and void, otherwise to remain in
full force and effect and in addition thereto, we are bound for the payment of all necessary and reasonable expenses
incurred by any and all sheriffs or other peace officers in re-arresting the principal in the event he fails to appear
before the court or magistrate named in the bond at the time stated therein.

Witness our hands this the _____ day of _____, A. D. 19_____.
Taken and approved this _____ day of _____, A. D. 19_____.

C. V. BUSTER KERN, Sheriff, Harris County, Texas.
By _____, Deputy _____
Filed _____

Principal _____
Address _____
Phone _____
C. V. BUSTER KERN, Sheriff, Harris County, Texas
By _____
Address _____
Phone _____
CA 3-8377

undersigned, J. MAGEE COOK
as sureties, are held and firmly bound unto the STATE OF TEXAS, in the penal sum of

DOLLARS,
for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and
assigns, jointly, severally and firmly, by these presents.

The condition of the above obligation is such, that, whereas, the above bound principal _____

has been arrested by C. V. BUSTER KERN, Sheriff of Harris County,
Texas, on a charge of a misdemeanor, by virtue of a capias, issued to said Sheriff by R. J. Lindley, ex-officio Clerk
of County Criminal Court at Law No. _____ of Harris County, Texas.

Now if the said principal shall be and personally appear instantanter at the present term of the County Criminal
Court at Law No. _____ of Harris County, Texas, now in session in and for the County of Harris, at the
Court House thereof, in the City of Houston, Texas, there to remain in attendance from day to day and from term to
term until discharged by due order of the Court, to answer the State aforesaid on said charge of a misdemeanor and
not to depart the Court, without leave, then, and in that case, this bond to be null and void, otherwise to remain in
full force and effect and in addition thereto, we are bound for the payment of all necessary and reasonable expenses
incurred by any and all sheriffs or other peace officers in re-arresting the principal in the event he fails to appear
before the court or magistrate named in the bond at the time stated therein.

Witness our hands this the _____ day of A. D. 19

Taken and approved this _____

day of A. D. 19

C. V. BUSTER KERN, Sheriff, Harris County, Texas.

By _____ Deputy _____

Filed _____

Address 100 Main Street, Suite 200
Houston, Texas 77002
Phone CA 3-8377

Address 100 Main Street, Suite 200
Houston, Texas 77002
Phone CA 3-8377

By _____ Deputy _____

Address 100 Main Street, Suite 200
Houston, Texas 77002
Phone CA 3-8377

Address 100 Main Street, Suite 200
Houston, Texas 77002
Phone CA 3-8377

Phone _____

STATE OF TEXAS

County of Harris
Before me, the undersigned authority, a Notary Public in and for said State and County, on this day of December, to me well known, and known to
certainly appeared _____
That the affiant desires and proposes to become a surety on the bond of C. V. Kern, in connection with the business of C. V. Kern,
111-25832-

and in order to induce C. V. BUSTER KERN, Sheriff, Harris County, Texas,

the official charged with the duty of approving or accepting said bond, to accept the bond of said C. V. Kern,

with the affiant and another or others as sureties thereon, makes the following statement concerning affiant's financial condition and
with reference to properties owned by affiant, to-wit:

That affiant is the sole owner of the following described properties; that each piece of the same is presently of the market
value set opposite each piece of the same; that the same is encumbered only to the extent and in the amount set opposite each piece
of said property, and that each piece of the same, after deducting the amount of the encumbrance shown from the present market value
thereof, has the net value set opposite each piece thereof, to-wit:

LOCATION AND DESCRIPTION	PRESENT MARKET VALUE	ENCUMBRANCE	NET VALUE
--------------------------	----------------------	-------------	-----------

Lot 1, Blk 14 Oak Forest and other properties in Harris County, Texas	\$113,000.00	\$35,000.00	\$78,000.00
--	--------------	-------------	-------------

plus affidavit on file
with Sheriff's office

That none of the property above described is affiant's homestead, and that the affiant is not using, and does not intend
to use, the same, or any part thereof, for any homestead or business purpose. That no part of said property is exempt from forced
sale under the laws of the State of Texas; that no part of said property is involved in litigation of any kind or character; that the
title to the above described property is good of record and in fact in the affiant; that the affiant has never heard his title to any
part of said property questioned by any person or corporation whomsoever, and that no part of the same is occupied by any person
or corporation claiming adversely to the affiant.
That the following is a full and complete list and statement of all bonds of every kind and character on which the affiant is
a surety or principal, and the amounts of such bonds, to-wit:

List on file with District Attorney

That there are no abstracts of judgment recorded in Harris County, Texas, or elsewhere, against the affiant.

That the affiant makes this statement for the purpose of inducing the approval and acceptance of said bond with himself as a
surety thereon, well knowing and believing that the making of this statement will induce the official charged with the duty of accepting
and approving said bond to accept and approve the same, and that all statements herein contained are true, SO HELP ME, GOD.

Subscribed and sworn to before me this the 26th day of December, A. D. 1965
by Affiant Surety
Witness my hand and seal of office this the 26th day of December, affiant.

the official charged with the duty of approving or accepting said bond, to accept the bond of said _____
L. E. L. T. E. L. L.

with the affiant and another or others as sureties thereon, makes the following statement concerning affiant's financial condition and with reference to properties owned by affiant, to-wit:

That affiant is the sole owner of the following described properties; that each piece of the same is presently of the market value set opposite each piece of the same; that the same is encumbered only to the extent and in the amount set opposite each piece of said property, and that each piece of the same, after deducting the amount of the encumbrance shown from the present market value thereof, has the net value set opposite each piece thereof, to-wit:

LOCATION AND DESCRIPTION	PRESENT MARKET VALUE	ENCUMBRANCE	NET VALUE
Lot 1, Blk 14 Oak Forest and other properties in Harris County, Texas	\$113,000.00	\$35,000.00	\$78,000.00

Plus affidavit on file
with Sheriff's Office

 Lot 1, Blk 14
Oak Forest and other
properties in Harris
County, Texas

 Plus affidavit on file
with Sheriff's Office

That none of the property above described is affiant's homestead, and that the affiant is not using, and does not intend to use, the same, or any part thereof, for any homestead or business purpose. That no part of said property is exempt from forced sale under the laws of the State of Texas; that no part of said property is involved in litigation of any kind or character; that the title to the above described property is good of record and in fact in the affiant; that the affiant has never heard his title to any part of said property questioned by any person or corporation whomsoever, and that no part of the same is occupied by any person or corporation claiming adversely to the affiant.
 That the following is a full and complete list and statement of all bonds of every kind and character on which the affiant is a surety or principal, and the amounts of such bonds, to-wit:

List on file with District Attorney

That there are no abstracts of judgment recorded in Harris County, Texas, or elsewhere, against the affiant.
 That the affiant makes this statement for the purpose of inducing the approval and acceptance of said bond with himself as a surety thereon, well knowing and believing that the making of this statement will induce the official charged with the duty of accepting and approving said bond to accept and approve the same, and that all statements herein contained are true, SO HELP ME, GOD.

L. E. L. T. E. L. L.
 Subscribed and sworn to before me this the 26th day of August, A. D. 1968
 by L. E. L. T. E. L. L., affiant.
 Witness my hand and seal of office this the 26th day of August, A. D. 1968
L. E. L. T. E. L. L.
 (NOTARY SEAL)

THE STATE OF TEXAS,
COUNTY OF HARRIS }

Before me, the undersigned authority, a Notary Public in and for said State and County, on this day personally appeared L. E. L. T. E. L. L., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 26th day of August, A. D. 1968.

(NOTARY SEAL)

Notary Public in and for Harris County, Texas.

IN COUNTY CRIMINAL COURT AT LAM NO. 1
FRIDAY, AUGUST 30, 1968

245576

ROBERT FRANKLIN PRICE AGGR. ASSAULT

Waived right to counsel; Plea of guilty;
\$200 fine in Marion County Court; Credit
13 days. TEN DAYS TIME WAIVED, DEFENDANT SENTENCED

245580

JOSEPH CARL GAMEL D. W. I.
Waived right to counsel; Plea of guilty;
\$200 fine; Credit 10 days.

TEN DAYS TIME WAIVED, DEFENDANT SENTENCED

245660

PHILLIP TERRY ROBERTSON THEFT

TII

Request 9/3/68 No Issue

245676

TONY GREEN AGGR. ASSLT. ON AN OFFICER
Waived right to counsel; Plea of guilty;
\$200 fine; Credit \$35.00; Credit
12 days. TEN DAYS TIME WAIVED, DEFENDANT SENTENCED

244824

RONALD KENT FRANKS CARRYING PRO. WEAPON
Request 7/3/68 No Issue

TII

245832

PRESTON A. TATE WRIT OF HABEAS CORPUS
Waive habeas right if all parties agree
2PM

JOSEPH CARL GAIEL

D. W. I.

JATI

Washed night after arrival; P.D. a 2nd G. until;
5 days + \$100.00; Credit to old debts.

TEN DAYS TIME WILL BE DEFERRED.

—214566
TII

PHILIPPINES 2003 EDITION

三

TAT

Request 9/3/68 ~~was~~ No 1555

三

245676

TATT

AGGREGATE OFFICE

卷之三

12 days TELLING TIME WAITED, DEFENDANT SENTENCED
Wainwright Attn: Mr. Justice
Circuit Court; Guilty; #3500; Circuit
Court Note

-214e24

TATT

CARRYING PRO. WEAPONS

Poetry 9/3/68 No Issue

三

245822

TAT

WRIT OF HABEAS CORPUS

卷之三

卷之三

6

AFFIDAVIT OF INABILITY TO PAY COSTS
OR GIVE SECURITY THEREFOR
FILED: OCTOBER 31, 1968

IN THE COUNTY CRIMINAL COURT NUMBER ONE
OF HARRIS COUNTY, TEXAS

No. 245,832

EX PARTE: PRESTON A. TATE

AFFIDAVIT OF INABILITY TO PAY COSTS
OR GIVE SECURITY THEREFOR

TO THE CLERK AND COURT REPORTER OF SAID HONORABLE
COURT:

Now comes PRESTON A. TATE, Petitioner, and having been duly sworn, makes the following statement:

I am too poor to pay the costs of court and Appeal in the above styled and numbered cause and I am unable to give security therefor.

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that the Clerk prepare an appellate record and perform all other services required of him, in the same manner as if the costs had been paid or the security given, and that the Court Reporter prepare a statement of facts in question and answer form, the same to constitute part of the record.

/s/ Peter S. Navarro, Jr.
Attorney for Plaintiff
6731 Harrisburg Street
Houston, Texas 77011
WA 8-3943

/s/ Preston A. Tate
Petitioner

[Filed Oct. 31, 1968, Ray Hardy, District Clerk,
Harris County, Texas, By /s/ (Illegible), Deputy.]

**STATE OF TEXAS)
)
COUNTY OF HARRIS)**

SWORN TO AND SUBSCRIBED before me by Preston A. Tate, this 11th day of October, 1968, to certify which witness my hand and seal of office.

**/s/ Linda Naraiyo
Notary Public in and for
Harris County, Texas**

[NOTARY SEAL]

ORDER OF THE COURT
FILED: NOVEMBER 14, 1968

IN THE COUNTY CRIMINAL COURT AT LAW
NUMBER ONE OF HARRIS COUNTY, TEXAS

No. 245,832

EX PARTE: PRESTON A. TATE

ORDER

THE AFFIDAVIT OF PRESTON A. TATE, Petitioner in above styled and numbered cause having been presented to this Court stating that Petitioner is too poor to pay costs of Court and appeal in above said cause of action and praying that the Clerk of said Court prepare an Appellate record and perform all other services required of him, in the same manner as if the costs had been paid or the security given, and that the Court Reporter prepare a statement of facts in question and answer form, the same to constitute a part of the record and it appearing to the Court that such petition is duly sworn to,

It is ORDERED, ADJUDGED and DECREED that Petitioner's application for a statement of facts and other relief as contained in said affidavit be heard before me at 2:30 o'clock P.M. on the 21 day of November, 1968, in the County Criminal Court at Law Number One Courtroom of Harris County, Texas.

/s/ Lee Duggan, Jr.
Presiding Judge

[Filed (Date and Time Illegible), Ray Hardy, Dist. Clerk,
Harris County, Texas, By /s/ (Illegible), Deputy.]

DESIGNATION OF MATERIALS FOR INCLUSION
FILED: NOVEMBER 15, 1968

IN THE COUNTY CRIMINAL COURT NUMBER ONE
OF HARRIS COUNTY, TEXAS

No. 245,832

EX PARTE: PRESTON A. TATE

DESIGNATION OF MATERIALS FOR INCLUSION
IN THE RECORD

TO THE HONORABLE CLERK OF COUNTY CRIMI-
NAL COURT AT LAW NUMBER ONE, HARRIS
COUNTY.

COURT REPORTER:

Pursuant to Article 40.09 of the Texas Code of Crimi-
nal Procedures, the Relator, PRESTON A. TATE re-
quests the following matter for inclusion in the record
in the Appeal, to the Texas Court of Criminal Appeals,
to wit:

- 1.) Petition For Writ of Habeas Corpus, and accom-
panying affidavits;
- 2.) Order granting hearing on the Petition and Order
setting bond;
- 3.) Order denying writ;
- 4.) Order continuing Relator's bond, pending appeal;
- 5.) Relator's Pauper's Oath;
- 6.) Transcription of all of the proceedings shown by
the notes of the Reporter;
- 7.) All docket entries by the Court;
- 8.) All orders relating to the preparation of the record
without payment of costs.

/s/ Peter S. Navarro, Jr.
PETER S. NAVARRO, JR.
Attorney for Relator-Appellant
6731 Harrisburg Street
Houston, Texas 77011
Wa 8-3943

[Filed (Date and Time Illegible), Ray Hardy, Dist. Clerk,
Harris County, Texas, By /s/ (Illegible), Deputy.]

245346	Willie R. Myles Juicy yellow, compacted & dry. Sustains damage & deterioration. A single fibered area of deterioration 3 x 3. Weight: 1/2 oz. Net weight 5 oz.	Neg coll Steck In open sun (12-13) never greened up. Not greened up at all. Dried out in sun at 12-13 days.	12/11/68	Aggr assault Reject	1/13/69 Green edible
245564					

245832	Preston A. Tate	Hearing	<u>Reuest</u>	11/22/68 No issue
WAS 3743				<u>3c</u>
245880	Loyd Russell Andrews	Speeding	<u>Reuest</u>	Weimer 1/14/69 with wastle
	<u>pezz</u>			

Heath
246040 Marvin O. Cooper Speeding
DISMISSED ON MOTION OF STATE'S ATTORNEY, T. D. A.

Kahn
✓ 246048 Delois M. Thomas, Jr. Speeding DISMISSED ON "MOTION OF STATE" Hunter T L. Kahn

249300 James Lee Fotherford
James Clint Smith

Theft
"Jail

Reest 12/3/68 No Issue

24645 James Robert Stanley Davis 3rd Farley
Reest 12/20/68 No Issue

247028 Herman Everett Lucy Neg. Hom
Reest 12-20-68 ~~No~~ No
Issue

245,832 Preston A. Tate Wirt.
Reest " 27/68 with
Issue
130

246,044 Clemon J. Pinne Neg. Coll.

DISMISSED ON MOTION OF STATE ^{Demetite} T. D.A.
Andt. D.A. #

M. • 2012-2013

112

Project 21169 No 1

16620
16621

Fender
Rayfield Jackson Inter. of vocation
Rosie - 1 / 23 / 68 with wife.
Change name to Sister.

214656
N^o 1
Gros et fin
P.
b.
C.
L.
123.

21:4656

Mahas

Thomas Randolph Lecture

Nahas S. A. 66

DISMISSED ON MOTION OF STATE OF COLORADO, BY

8.00

200

245328

Bonetati leg coll
Recent 12/19/68 with
Gray
white

215724

265726

Gallin

W. check 119/65 No 11810
Deduct 119/65

Ortho-Tao Ethel 01198

Otha Lee Ethel alias

— १८-५२

**OVERSIZE PAGE - SEE NEXT FRAME
FOR REMAINDER OF PAGE**

204656

Thomas Randolph Teague

Names

Geo C. Ellis
P.C. L. L.
Prav.

DISMISSED ON MOTION OF STATE & CROWN,
After DA

245328

Gray
NegDanny Anthony Bonetati Neg coll
Dec 12 / 68 with
w/defe

245724

James M. Benton
NegW. check
Rebut
Issue
Gacci

✓ 245808
1954
V. John Stan
C. Melvin
SIR —
Hes

Otha Lee Ethel alias

James Brown, Jr.

Kilgarlin

✓ 245812 Guilty; 30 days.
TEN DAYS TIME THUR, DECEMBER SEVENTEEN
1968

245828

Jordan M. Roman

Aggr assault

Rebut
1/21/69 with
w/defe

Alfano

48R

245832

Preston A. Tate

Hearing

42201994 on D.A.'s Motion to Dismiss
Motion denied. C.J. C. is suspended to
24
and a 8 per cent reduction in sentence

AGREED STIPULATIONS**FILED: MAY 13, 1969****IN THE COUNTY CRIMINAL COURT AT LAW #1
OF HARRIS COUNTY, TEXAS****No. 245,832****EX PARTE: PRESTON A. TATE****AGREED STIPULATIONS**

IT is agreed and stipulated by and between Relator, PRESTON A. TATE, and the State of Texas, by his attorney, that the said C. RAYMOND JUDICE, if he testified, would testify he was appointed Recorder for the Corporation Court Number Three of Houston, Texas by the Mayor of the City of Houston. That he is a full time Recorder or Corporation Judge as that term is used in this City; that he is an Attorney—he is an Attorney-at-law, and was the Judge who heard evidence and sentenced and committed Relator after his arrest on August 7, 1968, to the City Prison Farm in custody of the Chief of Police of the City of Houston, Texas until he shall have paid fines totalling \$425.00 in the following causes, to-wit:

Cause Number	Fine	Caption
6611 - 2867	\$50.00	No Texas operator's license
6610 - 6468	50.00	No Texas operator's license
6610 - 6467	50.00	Illegal Registration
6610 - 5986	50.00	Run Stop Sign
6610 - 5985	50.00	No Texas Operator's License
6610 - 5988	50.00	Expired License Plates
6611 - 2866	50.00	Expired License Plates
6605 - 1910	50.00	May 27, 1966 - Capias pro-fine
		Run Red Light
6605 - 1911	25.00	May 27, 1966 - Capias pro-fine
		No Texas Operator's License

Signed this the 13 day of May A.D. 1969.

/s/ Joe S. Moss
JOE S. MOSS
Attorney for the
State of Texas

/s/ Peter S. Navarro, Jr.
PETER S. NAVARRO, JR.
Attorney for Relator

[Filed May 13, 1969, Ray Hardy, District Clerk,
Harris County, Texas, By /s/ (Illegible), Deputy.]

IN THE COUNTY CRIMINAL COURT AT LAW NO. 1
OF HARRIS COUNTY, TEXAS

THE STATE OF TEXAS)
)
COUNTY OF HARRIS)

CERTIFICATE OF THE CLERK

I, RAY HARDY, District Clerk of Harris County, Texas, do hereby certify that the above and foregoing -25- pages in writing contain a complete full and correct transcript of the proceedings had at the August Term, A. D. 1968, of said Court, as shown by the papers on file and the records of my office, wherein Preston A. Tate was the Plaintiff, and Herman Short, Chief of Police of The City of Houston, Texas was the Defendant.

WITNESS my hand and seal of said Court at Houston, Texas, this 14th day of May, A. D., 1969.

RAY HARDY
District Clerk
Harris County, Texas

By: /s/ [Illegible]
Deputy

A True Copy
Attest:

GLENN HAYNES
Clerk
Court of Criminal Appeals of Texas

By: /s/ Tray Bennett
Deputy

[SEAL]

WRIT OF PROCEDEndo

THE STATE OF TEXAS } COUNTY CRIMINAL COURT
 vs. No. 245832 } AT LAW No. 7 OF
 HARRIS COUNTY, TEXAS }
 THE STATE OF TEXAS TO Municipal Court City
of Houston Harris County, Texas
 WHEREAS, In the case of the State of Texas vs. Reuben A. Tate
 No. 245832

appealed from your Court, the appeal of said Defendant was dismissed in the County Criminal Court at Law No. 1 of said County, on the 2 day of December A.D. 1962,
 and a Writ of Procedendo ordered;

THEREFORE, You are hereby commanded that you proceed with the enforcement of the judgment rendered against him in your Court, the said appeal of the said Defendant to the contrary notwithstanding, that you receive and file the original papers in said cause sent herewith, and collect as well the costs of this Court, which are set forth below. Herein fail not under penalty of the law.

BILL OF COSTS

CLERK'S FEES	SHERIFF'S FEES
cketting Cause	Serving _____ Capias and Mileage
Entering Judgment	Summoning <u>2</u> Witnesses and Mileage
Entering Complaint	Other Fees 100.00 <u>20.00</u> <u>A/C</u>
Writ of Procedendo	62.00 <u>20.00</u> <u>A/C</u>
Entering Appearances	Clerk's Fees
Issuing Capias	<u>20.00</u> <u>A/C</u>
Filing Papers	
Other Clerk Costs	
<u>Transcript</u>	<u>20.00</u> <u>A/C</u>
TOTAL	<u>43.00</u>

245832

Appealed from your Court, the appeal of said Defendant was dismissed in the County Criminal Court at Law No. / of said County, on the 2 day of December A.D. 1929:

and a Writ of Procedendo ordered;

THEREFORE, You are hereby commanded that you proceed with the enforcement of the judgment rendered against him in your Court, the said appeal of the said Defendant to the contrary notwithstanding, that you receive and file the original papers in said cause sent herewith, and collect as well the costs of this Court which are set forth below. Herein fail not under penalty of the law.

BILL OF COSTS

CLERK'S FEES		SHERIFF'S FEES			
Arresting Cause	15.00	Serving Capias and Mileage	20.00	Other Fees	28.00
Entering Judgment	5.00	Summoning 2 Witnesses and Mileage	2.00	Clerk's Fees	1.00
Entering Complaint	10.00	Other Fees	2.00		
Writ of Procedendo		26.00	26.00		
Entering Appearance		26.00	26.00		
Issuing Capias		26.00	26.00		
Filing Papers		26.00	26.00		
Other Clerk Costs		26.00	26.00		
<i>Overruled</i>					
					TOTAL 43.00

TO CERTIFY ALL OF WHICH I Witness my hand and the Seal of said Court at Office in Houston,
Texas, this the 2^d day of December A.D. 1871.

Postmaster,
Post Office,
Harris County, Texas

John C. Dill

NO. 14-27

COUNTY CRIMINAL COURT

AT LAW No. 1

HARRIS COUNTY

GM-14/630

JM-53/439

THE STATE OF TEXAS

vs.

WRIT OF PROCEDENDO

Issued this 21st day of

December A. D. 19

R. J. LINDLEY
District Clerk, Harris County, Texas

By John DeLois Deputy.

STATE OF TEXAS
COUNTY OF HARRIS

I, Ray Hardy, District Clerk of Harris County, Texas, do hereby certify that the foregoing is a true and correct copy of the original record, now in my lawful custody and possession, on March 10, 1970, as appears of record in my office.

Witness my official hand and seal of office this March 10, 1970

RAY HARDY, DISTRICT CLERK

Harris County, Texas

By John DeLois Deputy

SUPREME COURT OF THE UNITED STATES

No. 1873 Misc., October Term, 1969

PRESTON A. TATE, PETITIONER

v.

HERMAN SHORT, Chief of Police, Houston, Texas

On petition for writ of Certiorari to the Court of Criminal Appeals of the State of Texas.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1757 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 29, 1970